

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: LeMare M. Mason

Debtor.

) Case Number: 09-10692-M

) Chapter 13 Proceedings

) Honorable Pat E. Morgenstern-Clarren

TRUSTEE'S MOTION TO DISMISS CASE

Now comes **CRAIG SHOPNECK**, the duly appointed, qualified, and standing Chapter 13 Trustee ("Trustee") herein, and hereby moves this Honorable Court to dismiss the case of the Debtor ("Debtor") pursuant to Section 1307 of the Bankruptcy Code. In support of this motion, Trustee makes the following representations to the Court:

1. Debtor filed a petition under Chapter 13 of Title 11, U.S.C. on January 31, 2009. Debtor filed a proposed Chapter 13 Plan (the "Plan") pursuant to Section 1321 of the Bankruptcy Code on February 10, 2009. The Plan of Debtor calls for payments to Trustee in the amount of \$410.00 each month.
2. Pursuant to Section 1326 of the Bankruptcy Code, payments to Trustee were to have started no later than February 28, 2009. As of the date of this pleading, Trustee is not in receipt of any funds either from or on behalf of Debtor. As of the date of the hearing on this motion, Debtor will be delinquent \$1,230.00 through the April 2009 payment
3. Pursuant to Section 341 of the Bankruptcy Code, the original meeting of creditors was scheduled for March 18, 2009. Debtor did not have all schedules filed prior to that meeting and therefore the meeting of creditors was adjourned until April 1, 2009. Debtor failed to appear at the meeting of creditors on April 1, 2009.
4. Pursuant to Section 521(e)(2)(A)(i) of the Bankruptcy Code, the debtor is to provide to the Trustee, no later than 7 days prior to the date first set for the first meeting of creditors, a copy of the federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed. The meeting of creditors was originally scheduled for March 18, 2009. The 2008 federal income tax return was to be provided to Trustee no later than March 11, 2009 however, as of the date of this motion, Trustee has not received said federal income tax return.
5. Pursuant to Section 521(e)(2)(B) of the Bankruptcy Code, the Court shall dismiss the case unless the debtor demonstrates that the failure to comply is due to circumstances beyond the control of the debtor. Debtor has not demonstrated any circumstances to excuse this Bankruptcy Code requirement.
6. Furthermore, Section 1307(c)(1) of the Bankruptcy Code states that unreasonable delay by the debtor that is prejudicial to creditors is grounds for dismissal of the case of the debtor. In addition, Section 1307(c)(4) of the Bankruptcy Code states that failure to start making payments to Trustee (as specified in Section 1326 of the Bankruptcy Code) is grounds for dismissal of the case of the debtor. Trustee believes that the failure of Debtor to appear for examination, failure to provide Trustee's office with recent tax returns, as well as failure of Debtor to start making payments to Trustee, has unreasonably delayed the administration of the case of Debtor, and ultimately delayed the potential repayment of the creditors of the estate of Debtor. As a result, cause exists to dismiss the case of Debtor.

WHEREFORE your Trustee, being a proper party in interest, hereby moves this Honorable Court to grant his motion and dismiss the case of Debtor for the aforementioned reasons cited and for such other relief as the Court deems proper and just.

/S/ Craig Shopneck

CRAIG SHOPNECK (#0009552)

Chapter 13 Trustee

200 Public Square, BP Tower, Suite 3860

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CERTIFICATE OF SERVICE

A copy of the foregoing Trustee's Motion to Dismiss Case was served by regular U.S. Mail, postage prepaid, on the 3rd of April 2009, upon the following:

George W. MacDonald, Attorney for Debtor
(Via Electronic Mail)

LeMare M. Mason, Debtor
3360 East 149th Street
Cleveland, OH 44120

/S/ Craig Shopneck

CRAIG SHOPNECK (#0009552)

Chapter 13 Trustee

CS/rlc
4/3/09